

DIVISION I

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS
JOSEPHINE LINKER HART, JUDGE

CA 06-588

January 24, 2007

CRYSTAL BURNS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

APPEAL FROM THE CLAY COUNTY
CIRCUIT COURT
[NO. JV2004-1]

HONORABLE DAVID RAY
GOODSON, CIRCUIT JUDGE

AFFIRMED; MOTION TO BE
RELIEVED GRANTED

Crystal Burns appeals from an order terminating her parental rights to her son, D.J. Counsel for appellant has filed a motion to withdraw and a no-merit brief pursuant to the supreme court's decision in *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Ark. Sup. Ct. R. 4-3(j)(1). The clerk of this court sent appellant a certified copy of counsel's brief and the motion to be relieved, informing her of the right to file pro se points for reversal under Ark. Sup. Ct. R. 4-3(j)(2). Appellant has filed a list of points.

Counsel's motion was accompanied by a brief listing all adverse rulings made at the termination hearing and explaining why there is no meritorious ground for reversal to each ruling. The brief included a discussion of the sufficiency of the evidence to support the termination order based on evidence presented at all the prior proceedings that were

incorporated in the record of the termination proceeding, as required by *Lewis v. Arkansas Department of Human Services*, 364 Ark. 243, ___ S.W.3d ___ (2005).

Appellant's parental rights were terminated based on a finding that it was in the child's best interest and on the ground that other factors or issues arose subsequent to the filing of the original petition for dependency neglect that demonstrated that the return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent. *See* Ark. Code Ann. § 9-27-341(b)(3)(A) & (B)(vii)(a) (Supp. 2005). In her list of points that, as best we can understand, appellant challenges the sufficiency of the evidence supporting the termination decision. ADHS has filed a brief that purports to respond to these points.

Pursuant to Arkansas Code Annotated section 9-27-341(b)(3), the facts warranting termination of parental rights must be proven by clear and convincing evidence. In reviewing the trial court's evaluation of the evidence, we will not reverse unless the trial court clearly erred in finding that the relevant facts were established by clear and convincing evidence. *Baker v. Arkansas Dep't of Human Servs.*, 340 Ark. 42, 8 S.W.3d 499 (2000). To conclude that a trial court made a clearly erroneous decision, we must be left with the definite and firm conviction that a mistake has been made. *Dinkins v. Arkansas Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001).

The child in this case was taken into custody because of abandonment. However, it was later learned that appellant suffers from a serious mental illness. She was twice hospitalized in a mental-health facility during the course of the proceedings. There was evidence presented at the termination hearing, as well as throughout the proceedings, that appellant failed to cooperate with counseling, that she had failed to follow through on the recommendations of her psychological evaluation, and that she had failed to submit to further evaluation. There was also evidence that appellant did not consistently comply with the recommended medication regimen. Appellant had admitted using marijuana, but she refused to submit to random drug screening. There was evidence that appellant had failed to maintain stable and adequate housing. From our review of the record, we are not able to say that the decision to terminate appellant's parental rights is clearly erroneous.

Appellant also maintains in her list of points that her situation has improved since the termination hearing. Our review, however, is limited to the evidence presented below. We cannot consider matters that are outside the record to determine issues on appeal. *Wal-Mart Stores, Inc. v. Tucker*, 353 Ark. 730, 120 S.W.3d 61 (2003).

After carefully examining the record, we find that counsel has complied with the requirements established by the Arkansas Supreme Court for no-merit appeals in termination cases, and we hold that the appeal is wholly without merit. Therefore, we grant counsel's motion to be relieved and affirm the order terminating appellant's parental rights.

Affirmed; motion to be relieved granted.

GLOVER and VAUGHT, JJ., agree.